REMARKS

At the outset, Applicant wishes to confirm that the power of attorney on file with the USPTO designates customer number 63617. For whatever reason the USPTO records incorrectly reflect that the customer number is 63817. Applicant has made previous submissions to the USPTO to have this situation corrected. Applicant kindly asks that the Examiner verify that this correction has been made, so that the customer number for this matter be indicated as **63617.**

The Office Action of July 5, 2007 ("Office Action") rejected claims 1, 6, 10 and 16 under 35 USC 112 on the basis that the limitation "said packets" lacks antecedent basis. It is respectfully submitted that the amendments to the claims now address this rejection.

The Office Action rejected Claims 1-16 were rejected under 35 USC 102(e) as being anticipated by US 2004/0260750 ("Ruutu").

Ruutu discloses a mobile phone 118B that includes a quality of service ("QoS") module. The QoS module is at various times referenced at 132 and other times at 202, but it appears that both references ultimately refer to the same QoS module within the mobile phone 118B. The QoS module appears to have many functions. Fundamentally, however, the quality of service module is configured via the processing system to receive a "generic quality of service parameter" from the user applications and apply a "specific quality of service parameter to the protocol modules." (See paragraph 10, top of page 2 of Ruutu). An exemplary generic quality of service parameter includes "a policy for applying a quality of service measure selected from a plurality of quality of service measures to a network data connection." (See claim 2 of

Ruutu). Paragraph 65 of Ruutu (cited in the Office Action) makes reference to establishing new network connections in place of old network connections and using new network protocols on the new network connections. During establishment of the new network protocol, the specific QoS parameter is applied. (See Paragraph 65 of Ruutu). Despite the foregoing, Ruutu does not disclose or suggest transmitting packets over one layer of a protocol stack and then examining QoS data from another layer of the protocol stack and developing a retry strategy therefrom. Ruutu does state in the background of the invention that: "The end result is that there exist a number of methods for provisioning of Quality of Service both at different layers of OSI model. As a result, the QoS standards vary widely, and most application level use of QoS is ad hoc and highly dependent on the underlying network protocols.", but this merely identifies that QoS can be *provisioned* at different layers of the OSI model and does not satisfy the elements of the claims as amended.

In order to clearly distinguish over the prior art Applicant has amended claim 1 as follows:

1. A method of delivering packets over a link comprising the step of:

transmitting at least one packet over said link via a first layer of a protocol stack employed by said link;

repeating said transmitting step until said transmitting step fails;

determining a quality of said link at said electronic device by examining quality-of-service (QoS) information inherently available within a second layer of said protocol stack; said second layer being a different layer in said protocol stack than said first layer;

developing a retry strategy for said transmitting step based on said determined quality; and,

retransmitting said at least one packet according to said retry strategy.

Amended claim 1 incorporates the limitations of claim 1 as originally filed and adds further limitations. While Ruutu does disclose a quality of service manager, the quality of service manager is never configured to perform at least the three highlighted limitations above. For at least these reasons Applicant respectfully submits that claim 1 now distinguishes over the prior art.

Amended claim 2 adds further limitations to claim 1 whereby the transmitting step from claim 1 is resumed the transmitting step using the retry strategy if the re-transmitting step succeeds, and terminating the method if the re-transmitting step fails. Applicant further respectfully submits that at these limitations are also not present in the prior art.

Amended claim 10 presents the method of claim 1 in device form, and therefore applicant respectfully submits that claim 10 also clearly distinguishes over the prior art. Applicant has included references to a transmitter and a computer processor as structural elements capable of performing the claimed function. Applicant respectfully submits that support for these structural elements is found in at least paragraph 0032 of the present application which indicates that client 34 can be based on construction of functionality of various electronic devices, including computers, and therefore a person skilled in the art would reasonably understand that from the specification the electronic device as claimed in claim 10 would include a computing processor. Likewise, a person skilled in the art would understand from at least paragraph 35 of the present application which indicates that

client 34 can deliver packets, and therefore the presence of a transmitter would be reasonably apparent to a person of skill in the art.

Applicant has also taken care to amend the existing dependent claims and added further dependent claims which Applicant respectfully submits further patentably distinguish over the prior art.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The Commissioner is authorized to charge any shortage in fees due in connection with the filing of this paper to Deposit Account No. 50-3750.

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Respectfully submitted,

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